(21)

FILED
JUN 26 1941
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940.

No. 3085. 85

CARL HALL, SUING INDIVIDUALLY AND IN HIS OWN BEHALF, AND ON BEHALF OF ALL OTHER COAL MINERS SIMILARLY SITUATED, OF DISTRICT NO. 30, UNITED MINE WORKERS OF AMERICA, ET AL., - - - - - - - *Petitioners,*

vs.

V. E. BARNES, OMER C. STUBBS AND JOHN C. C. MAYO, JR., MEMBERS OF THE UNEMPLOYMENT COMPENSATION COMMISSION OF THE STATE OF KENTUCKY, ET AL., - - - - - - - *Respondents.*

BRIEF FOR RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

HUBERT MEREDITH,
Atty. General of Kentucky,
A. E. FUNK,
Asst. Attorney General,
Counsel for Unemployment Compensation Commission of Kentucky.

CALDWELL & GRAY,
Ashland, Kentucky,
Of Counsel.

INDEX

Page

STATEMENT. 1

THE JUDGMENT OF THE KENTUCKY COURT OF APPEALS IS NOT REVIEWABLE HEREIN, THE CASE HAVING BEEN DECIDED WHOLLY UPON STATE GROUNDS AND NO FEDERAL QUESTION BEING PROPERLY PRESENTED. 1- 2

Waters-Pierce Oil Co. v. Texas,
212 U. S. 112, 53 L. Ed. 431.

American Surety Co. v. Baldwin,
287 U. S. 156, 77 L. Ed. 231.

Godchaux Co. v. Estopinal,
251 U. S. 179, 64 L. Ed. 213.

Great Northern R. Co. v.
Sunburst Oil & Refg. Co.,
287 U. S. 358, 77 L. Ed. 360.

NO FEDERAL RIGHTS ARE DENIED BY THE JUDGMENT OF THE STATE COURT. 2- 3

Department of Industrial Relations
v. Pesnell (Ala.), 199 So. 720.

Petition for certiorari denied
June 2, 1941.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940.

No. 1055.

CARL HALL, SUING INDIVIDUALLY AND IN HIS OWN BEHALF, AND ON BEHALF OF ALL OTHER COAL MINERS SIMILARLY SITUATED, OF DISTRICT NO. 30, UNITED MINE WORKERS OF AMERICA, ET AL., - - - - - - - *Petitioners,*

vs.

V. E. BARNES, OMER C. STUBBS AND JOHN C. C. MAYO, JR., MEMBERS OF THE UNEMPLOYMENT COMPENSATION COMMISSION OF THE STATE OF KENTUCKY, ET AL., - - - - - - - *Respondents.*

BRIEF FOR RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

MAY IT PLEASE THE COURT:

The opinion of the Kentucky Court of Appeals, to review which a writ of certiorari is here applied for, is reported in 146 S. W. (2d) 929, the opinion of the Court having originally been handed down on December 20, 1940, and the petition for rehearing denied without opinion on February 14, 1941, at which time the Court entered judgment reversing the Circuit Court and affirming the Unemployment Compensation Commission's denial of compensation on the ground

that the petitioner's unemployment was due to a labor dispute.

THE JUDGMENT IS NOT REVIEWABLE HEREIN.

The Court of Appeals decided the case on the same grounds as had the Unemployment Compensation Commission. The claimant, in appealing from the award of the Commission to the Circuit Court relied wholly on State grounds in his assignment of error and raised no Federal question. On the Commission's subsequent appeal from the adverse judgment of the Circuit Court, to the Court of Appeals, the claimant in his several briefs filed in the appellate court again asserted no Federal question. After an adverse decision by the Court of Appeals, the petitioner for the first time sought to raise Federal questions in a petition for rehearing, which the Court did not pass upon in denying the petition for rehearing without opinion. Under these circumstances, the attempt to raise Federal questions came too late.

Waters-Pierce Oil Co. v. Texas,
212 U. S. 112, 53 L. Ed. 431.

American Surety Co. v. Baldwin,
287 U. S. 156, 77 L. Ed. 231.

Godchaux Co. v. Estopinal,
251 U. S. 179, 64 L. Ed. 213.

Great Northern R. Co. v. Sunburst Oil & Refg. Co., 287 U. S. 358, 77 L. Ed. 360.

NO FEDERAL RIGHTS ARE DENIED BY THE JUDGMENT.

Aside from the petitioner's failure to raise the alleged Federal questions in time, the contention that

any rights arising under the Federal Constitution or Statutes are infringed by the judgment of the Kentucky Court of Appeals is without merit.

The decision of the Alabama Court of Appeals in Department of Industrial Relations v. Pesnell, 199 So. 720, which was cited and followed by the Kentucky Court of Appeals in the present case, involved an identical denial of compensation upon the same grounds to claimants whose unemployment arose out of the same cessation of operations throughout the bituminous coal industry. The petition for a writ of certiorari which was filed in this Court in the Alabama case presents the same claim of an alleged denial of Federal rights which is raised here; the Court denied that petition for certiorari on June 2nd, 1941.

It is respectfully submitted that the petition for a writ of certiorari herein should be denied.

HUBERT MEREDITH,
Atty. General of Kentucky,

A. E. FUNK,
Asst. Attorney General,

Counsel for Unemployment Compensation Commission of Kentucky.

Of Counsel:
ROBT. T. CALDWELL and
PORTER M. GRAY, of
Ashland, Kentucky.